

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

CARL FOUST,

Plaintiff,

v.

ALLEN, et al.,

Defendants.

No. 2:23-cv-00179-DAD-DMC (PC)

ORDER ADOPTING IN FULL FINDINGS
AND RECOMMENDATIONS AND
DISMISSING CERTAIN CLAIMS AND
DEFENDANTS

(Doc. No. 26)

Plaintiff Carl Foust is a state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action brought pursuant to 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On July 25, 2023, the assigned magistrate judge screened plaintiff's complaint and concluded that plaintiff had stated a cognizable claim for excessive use of force in violation of the Eighth Amendment against defendants I. Perez, M. Strange, and Godinez, but that plaintiff had failed to state any other cognizable claims. (Doc. No. 10.) The magistrate judge granted plaintiff leave to file a first amended complaint addressing the deficiencies identified in the screening order within thirty (30) days of the date of that screening order and warned plaintiff that "if no amended complaint is filed within the time allowed therefor, the Court will issue findings and recommendations that the claims identified herein as defective be dismissed" (*Id.* at 5.)

1 Plaintiff did not file a first amended complaint. Accordingly, on January 12, 2024, the magistrate
2 judge issued findings and recommendations recommending that this action proceed only on the
3 claims found to be cognizable in the screening order and that all other claims and defendants be
4 dismissed from this action due to plaintiff's failure to state a claim. (Doc. No. 26.)

5 The pending findings and recommendations were served on the parties and contained
6 notice that any objections thereto were to be filed within fourteen (14) days after service. (*Id.* at
7 2.) Plaintiff filed objections to the pending findings and recommendations on January 29, 2024.
8 (Doc. No. 28.) Plaintiff's objections provide no basis upon which to decline to adopt the pending
9 findings and recommendations.

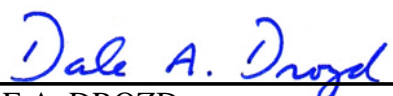
10 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this court has conducted a
11 *de novo* review of the case. Having carefully reviewed the entire file, including plaintiff's
12 objections, the court concludes that the findings and recommendations are supported by the
13 record and by proper analysis.

14 Accordingly:

- 15 1. The findings and recommendations issued on January 12, 2024 (Doc. No. 26) are
16 adopted in full;
- 17 2. This action shall proceed on plaintiff's Eighth Amendment claim asserted against
18 defendants I. Perez, M. Strange, and Godinez;
- 19 3. All other claims brought by plaintiff in this action are dismissed with prejudice;
- 20 4. Defendant Allen is dismissed as a defendant in this action;
- 21 5. The Clerk of the Court is directed to update the docket to reflect that defendant
22 Allen has been terminated from this action; and
- 23 6. This matter is referred back to the magistrate judge for further proceedings
24 consistent with this order.

25 IT IS SO ORDERED.

26 Dated: **December 1, 2024**

27 
28 DALE A. DROZD
UNITED STATES DISTRICT JUDGE